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Expedited Examining Procedure
Group 3743**PATENT**
Docket No. 56842US002**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s):	MITTLESTADT et al.)	Group Art Unit:	3743
)		
Serial No.:	09/888,943)	Examiner:	Nihir B. Patel
Confirmation No.:	9282)		
)		
Filed:	25 June 2001)		
)		
For:	<u>RESPIRATOR VALVE</u>)		

RESPONSE UNDER 37 CFR §1.116

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Office Action mailed 12 January 2005 has been received and reviewed. The pending claims are claims 15-47.

Reconsideration and withdrawal of the rejections in view of the following comments are respectfully requested.

Request to Withdraw Finality of the Present Office Action as Premature

On October 19, 2004, a Request for Continued Examination, an Amendment and Response, a Petition for Extension of Time, and authorization to charge the deposit account for the requisite fees were filed in the present application. The Amendment and Response, *inter alia*, canceled claims, amended the then pending claims, and requested entry of 29 new claims (claims 19-47), 2 of which are independent claims reciting further embodiments of the present

Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure

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invention (claims 28 and 38). The amended claims and new claims 19-27, dependent on the amended independent claim (claim 15), were acknowledged as allowable in the present application (claims 15-27). However, new claims 28-47 were finally rejected herein. Applicants respectfully assert that the final rejection of claims 28-47 is premature and, thus, request withdrawal of the finality of the rejection.

Applicants submit that the Request for Continued Examination, submission of the Amendment and Response, and authorization of payment of the requisite fees fully satisfy the conditions for filing a Request for Continued Examination under 37 C.F.R. §1.114 (see also M.P.E.P. §7106.07(h)(I)). Applicants note that the Examiner did not acknowledge the valid submission of the Request for Continued Examination herein and respectfully request acknowledgment thereof in the next official communication.

As a valid Request for Examination (RCE) was filed herein, the present action, being the action immediately subsequent to the filing of the RCE, may be made final only if the conditions set forth in M.P.E.P. §706.07 (b) are met (see M.P.E.P. §706.07(h)(VIII)). Under these conditions, all of the rejected new claims submitted with the RCE must be drawn to the same invention as claimed prior to filing the RCE, and all of these claims must be such that they would have been properly finally rejected if submitted and considered before filing of the RCE. Applicants note that the new claims finally rejected herein, claims 28-47, are drawn to further embodiments of the invention and have not been previously considered by the Examiner. Applicants assert, therefore, that these claims would have not been properly finally rejected if submitted prior to filing of the RCE and, thus, are not properly finally rejected herein. Applicants further note that the Examiner failed to provide justification for finally rejecting the new claims, and such justification is respectfully requested.

For at least the above reasons, Applicants respectfully request that the finality of the present Office Action be withdrawn as premature.